UNITED
NATIONS

CAT

Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

Distr.
GENERAL

CAT/C/SR.369
3 May 1999

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Twenty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 369th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 28 April 1999, at 3 p.m.

Chairman: Mr. BURNS

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GE.99-41364 (E)

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Initial report of The former Yugoslav Republic of Macedonia (CAT/C/28/Add.4; HRI/CORE/1/Add.83)

1. At the invitation of the Chairman, the members of the delegation of The former Yugoslav Republic of Macedonia took places at the Committee table.

2. The CHAIRMAN invited the delegation to reply to the questions raised by the members of the Committee at the 366th meeting.

3. Mr. PETRESKI (The former Yugoslav Republic of Macedonia) referred briefly to the general context in which The former Yugoslav Republic of Macedonia had worked to uproot the institutional causes of torture. The country faced considerable material constraints and had a relatively low level of development and standard of living. It was undergoing a transition affecting not only the legal and political system, but also collective and individual values. Among the problem which had affected it were structural adjustment, a widening social gap and new patterns of crime which had emerged in recent years.

4. Mr. PENDAROVSKI (The former Yugoslav Republic of Macedonia) addressed the question raised by Mr. Yakovlev concerning the moment at which a person deprived of his liberty had the right to consult a lawyer. Under the Constitution, the human right to freedom was irrevocable and could be restricted only by decision of a court or in accordance with specific procedures. Any person summoned, apprehended or detained had the right to counsel during all police and court proceedings. Several articles of the Code of Criminal Procedure further specified that the defendant had the right to a defence lawyer of his choosing during interrogation and court proceedings, and that detainees were entitled immediately upon arrest to inform close relatives or third parties of their detention. Under the Law on Internal Affairs, police officers must attempt to notify the family of the detained person within three hours of the arrest. The status of such notification was documented by means of an official form.

5. Detainees in police custody had access to a doctor, and at the doctor's request the medical examination could take place in private. The results of all medical examinations were formally recorded and were made available to the detainee and his lawyer.

6. The national legislation and practice made no provision for incommunicado detention. During detention prior to questioning, the accused was never left alone with a police officer.

7. Mr. PETRESKI (The former Yugoslav Republic of Macedonia), in response to the question raised by Mr. Yakovlev concerning the implementation of articles 1 and 2 of the Convention, informed the Committee that information from the State Statistical Office was being circulated on the number of persons accused and convicted of torture and related crimes.

8. Mr. TODOROV (The former Yugoslav Republic of Macedonia) replied to questions posed by Mr. Yakovlev, Mr. Mavrommatis and Mr. Burns concerning the legal admissibility of evidence derived from torture. The legal system was not based on common law, where the principle of formally established evidence predominated, but on civil law, where the principle of substantial truth prevailed. The judge was not obliged to pursue a specific type of evidence formally presented by the defence or the prosecution, but was free to consider any evidence in order to establish the facts. However, confessions did not constitute crucial evidence under the civil law system, and the use of evidence obtained through torture was illegal. Under article 15 of the Code of Criminal Procedure, the judge must not take into consideration or base his final judgement on evidence obtained unlawfully. That would include evidence extracted through the violation of provisions of the Constitution, other laws, or ratified international treaties, which were directly applicable in the national legal system. Article 210 prohibited the use of torture, threats or other forms of pressure to obtain confessions or other statements.

9. A final judgement based on illegally obtained evidence would constitute grounds for appeal and suspension of the judgement by the court of appeal. Statements made by defendants and others during preliminary questioning must be kept in separate, sealed envelopes, and could not be considered as evidence until the end of the trial.

10. Mr. PENDAROVSKI (The former Yugoslav Republic of Macedonia) responded to Mr. Yakovlev's query concerning independent authorities which reviewed individual complaints. Citizens could appeal against administrative or practical measures taken by Government ministries or State agencies to three permanent commissions, reporting respectively to the Government, to Parliament and to the Office of the President of the Republic. In addition, the Parliament had established a permanent survey commission for the protection of rights and freedoms of citizens in accordance with article 76 of the Constitution. That commission's findings served as a basis for procedures to determine the responsibility of public officials. The Constitution also established the institution of Ombudsman, an office which acted independently and autonomously to protect citizens from acts carried out by State bodies in violation of their constitutional or legal rights. In the past year, seven allegations of torture had been filed with the Ombudsman's office, including one which had been submitted to the Public Prosecutor for the initiation of criminal proceedings against the perpetrators, and was still under consideration.

11. Ms. JANJIC (The former Yugoslav Republic of Macedonia), in answer to questions put by Mr. Yakovlev, Mr. Burns and Mr. Sørensen concerning compensation of victims of torture, said that the Code of Criminal Procedure permitted courts hearing criminal cases to decide on claims made by persons who had suffered damage as a result of criminal offences. The request must be submitted prior to completion of the trial before the court of first instance. If the accused was convicted, the court could award full or partial compensation to the victim. If the information adduced in the criminal proceedings was insufficient, the court could direct the injured party to apply for compensation through a civil procedure. To date, in practice, the courts had very rarely settled compensation claims during criminal trials, in order not to delay the proceedings. Referral to a civil procedure was

nevertheless considered undesirable, as it would entail additional costs for a person who had already been a victim of a criminal act. A revision of the Code of Criminal Procedure which was currently under consideration therefore stipulated that the court should, as a rule, award compensation as part of the criminal proceedings, referring cases to the civil courts only in exceptional instances. The revision would also establish a State fund for the victims of criminal offences, including torture.

12. Mr. PENDAROVSKI (The former Yugoslav Republic of Macedonia), in replying to questions raised by Mr. Yakovlev and Mr. Burns about allegations of excessive use of force against members of the Roma minority, emphasized that the Ministry of the Interior must take the same approach to criminal offences regardless of the perpetrator's or victim's race, sex, colour, national and social origin, political or religious beliefs, or property or social status. The Ministry always handled complaints of police improprieties lodged by Roma with the utmost seriousness. In the past year and a half, there had been no complaints of torture committed against a member of the Roma minority.

13. More generally, the statistics showed that over the past three years there had been a clear decrease in the use of physical force by police officers, as also in the number of cases where physical force had been unjustified. He believed that was a result of courses and seminars held with the participation of international experts, including the "Police and Human Rights 1997-2000" seminar organized in Skopje in September 1998, by the Council of Europe.

14. Ms. GORGIEVA (The former Yugoslav Republic of Macedonia) addressed the question, raised by Mr. Burns and Mr. Mavrommatis, of the incorporation of the definition of torture into domestic law. While there was no comprehensive provision incorporating all elements of the definition contained in the Convention, the legal system contained a number of provisions which together did fully cover the subject. The Constitution explicitly prohibited all forms of torture and other forms of inhuman or degrading treatment or punishment, and that provision was taken up in all relevant laws, including the Code of Criminal Procedure, the Law on Execution of Sanctions and the Criminal Code. Article 9 of the Constitution prohibited discrimination on the basis of race, sex, colour of skin, national and social origin, political and religious beliefs and property or social status, thus covering the concept of discrimination referred to in the definition of torture. Finally, under the Constitution, international treaties ratified by the Republic were an integral part of the legal system and were directly applicable by national courts.

15. Mr. TODOROV (The former Yugoslav Republic of Macedonia), referring to a question raised by Mr. Burns on the principle of universal jurisdiction for the prosecution of the crime of torture when it was committed by foreign nationals in other countries against foreign citizens, said the criminal laws of his country were applicable. Under the national legislation, foreigners could be sentenced to five years' imprisonment, or to severer penalties within the limits prescribed in the legislation of the country where the crime had been perpetrated.

16. In cases where the act was considered a crime according to the generally recognized principles of the international community, the defendant could,

with the approval of the Public Prosecutor, which would always be accorded in the case of torture, be prosecuted regardless of the provisions of the domestic law prevailing in the country where the offence had taken place.

17. In response to Mr. Burns's question, Ms. LAZAROVA-TRAJKOVSKA (The former Yugoslav Republic of Macedonia) said that, where grounds existed for suspicion that a crime had been committed, the police could issue a summons, although a citizen was not obliged to respond. The person in question could be apprehended only with the prior authorization of a court. Such interviews were part of the 24-hour maximum period of police custody.

18. Ms. JANJIC (The former Yugoslav Republic of Macedonia), in reply to another question from Mr. Burns, said that the right to counsel during pre-trial and trial proceedings was constitutionally guaranteed and was embodied in the general provisions of the Code of Criminal Procedure. Suspects must be immediately informed of their right to counsel of their own choice, the presence of such counsel being obligatory in certain cases. The accused might be assigned counsel, at his request, where justified by his financial circumstances. The Code of Criminal Procedure likewise embodied the right of the accused to be present during the examination of witnesses and to ask them questions, both during the investigation proceedings and in court.

19. Mr. ÇELEVSKI (The former Yugoslav Republic of Macedonia) clarified that the right referred to in paragraph 160 of the initial report (CAT/C/28/Add.4) related exclusively to convicted persons. The rights of persons in pre-trial detention were regulated in a special chapter of the Code of Criminal Procedure which provided for the submission of complaints regarding their treatment to the President of the Court and the examining magistrate. Supervision of detainees was the responsibility of the President of the competent court of first instance; that officer, or the judge appointed by him, must visit the detainee at least once a week, with provision for confidential conversation, and was obliged to take necessary measures to remedy any irregularities in the conditions of detention. Under the Law on Execution of Sanctions, persons who had submitted a complaint but were not satisfied with the administrative decision of the Directorate of Execution of Sanctions could submit a complaint to the Supreme Court of the Republic of Macedonia. The Directorate could initiate criminal proceedings before the Public Prosecutor, where appropriate.

20. Ms. GORGIEVA (The former Yugoslav Republic of Macedonia), in further reply to Mr. Burns's questions, said that every citizen of the Republic had the right to bring before the Constitutional Court an action of unconstitutionality in respect of any law or rules or any act of the organs of the State administration or institutions carrying out a public function, thereby ensuring the general protection of all the human rights guaranteed by law, including the prohibition of torture expressly embodied in article 11 of the Constitution.

21. In reply to Mr. Burns's question regarding other offences in the Criminal Code having elements of cruel, inhuman or degrading treatment, Ms. JANJIC (the former Yugoslav Republic of Macedonia) cited crimes against life and body, against human rights and freedoms, against sexual freedom and sexual morality, against marriage, family and youth, against human health,

against property (e.g. armed robbery, extortion and blackmail), against armed forces (e.g. maltreatment of subordinates), against the judiciary (coercion of judicial officials) and against humanity and international law.

22. In regard to the matters raised by Mr. Sørenson, Mr. MICEV (The former Yugoslav Republic of Macedonia) said that educational programmes against torture and other cruel, inhuman and degrading treatment featured throughout medical training, together with medical ethics at a later stage. Medical ethics and the possibility of abuse were given particular emphasis in the psychiatry specialization, which included a four-month course in forensic psychiatry, introducing students to the special conditions prevailing in, for example, prisons and correctional institutions. Organizations such as the Macedonian Psychiatric Association and the Macedonian Medical Society held regular meetings, symposiums and congresses on such subjects. In the area of the rehabilitation of victims of torture, a one year postgraduate course in prevention, recognition and treatment of post-traumatic stress disorders had been organized in 1997-1998 in conjunction with WHO, the Ministry of Health and the Medical Faculty of Skopje. The 40 graduates of the course would act as multipliers. A programme had recently been introduced to provide psychological support to refugees, with the participation of the Open Society Foundation, WHO, the national Red Cross, the Ministry of Health and NGOs. In Skopje and four other towns in Macedonia specialized clinics existed for the treatment of post-traumatic stress disorders.

23. Mr. PETRESKI (The former Yugoslav Republic of Macedonia) regretted the late submission of the initial report of the former Yugoslav Republic of Macedonia, which was to be attributed to domestic circumstances; concerted efforts were being made to enhance reporting capacity, on the basis of experience gained in producing the initial report, and it was expected that future deadlines for submission of periodic reports would be met.

24. Ms. JANJIC (The former Yugoslav Republic of Macedonia), replying to Mr. Mavrommatis's question, said that the Code of Criminal Procedure permitted the Minister of Justice to attach conditions protecting a person who was to be extradited. Thus in 1995, the extradition of a Belgian national, who had committed several offences punishable by death under Belgian law, had been authorized only upon receipt of a guarantee that such a penalty, which had been abolished by the Republic, would not be imposed or executed by the Belgian authorities.

25. Mr. TODOROV (The former Yugoslav Republic of Macedonia), replying to further points raised by Mr. Mavrommatis, said that paragraph 18 of the initial report (CAT/C/28/Add.4) should have referred to "agencies" rather than "organizations". In regard to paragraph 64, civil legislation applied to all citizens of the Republic of Macedonia, including members of the military, since no military courts or special military legislation existed. Current police training practices had been developed in accordance with the principal international human rights instruments, with emphasis on the humane treatment of citizens.

26. Mr. PENDAROVSKI (The former Yugoslav Republic of Macedonia), in reply to concerns expressed by Mr. El Masry, said that any means, methods and devices that were not specified in the regulations for use of firearms and other

coercive means (firearms, rubber truncheons, physical force, water cannon, tear gas, special motor vehicles, devices for stopping motor vehicles, and use of dogs and horses) were deemed to be illegal. Further, the use of the means specified was subject to clearly defined conditions and must be preceded by warnings.

27. Mr. CELEVSKI (The former Yugoslav Republic of Macedonia), replying to a question concerning the monitoring of interrogation rules and practices with a view to preventing torture, said that a number of relevant laws and regulations had been amended in recent years and new by-laws had been enacted. Article 12 of the Law on Execution of Sanctions now included an explicit prohibition of torture and other forms of inhuman or degrading treatment or punishment. Article 20 prohibited medical or other experiments that impaired the physical or psychological integrity of convicted persons. Article 19 prohibited the collective punishment of prisoners and the use of force as a means of punishment. Article 4 required prison officers to respect prisoners' religious convictions. Article 75 provided for judicial supervision of penal institutions and a State Commission for Supervision had been established. The provision in the Code of Criminal Procedure allowing a judge to caution a prisoner that silence might complicate the gathering of evidence in his defence had been revoked because of the scope it offered for coercing an accused person to speak. The Ministry of the Interior was engaged in an ongoing process of revision of relevant laws, rules and regulations.

28. Mr. TODOROV (The former Yugoslav Republic of Macedonia) said that a subordinate would not be punished under the Criminal Code for committing a crime on the orders of his superior as part of his official duties unless the order involved the commission of a war crime or some other serious crime or unless the subordinate knew that execution of the order would be a crime. The term "serious crime" denoted all crimes carrying a sentence of at least five years' imprisonment, including the crime of torture.

29. Mr. CELEVSKI (The former Yugoslav Republic of Macedonia) said that there was a judge in every court of first instance with a penal establishment in its jurisdiction who was responsible for supervising the execution of sanctions, including the treatment of convicted persons and the enforcement of their rights and duties. The director of the establishment was required to provide the judge with relevant documents and unrestricted facilities for the performance of his supervisory duties, including confidential meetings with prisoners. If irregularities came to light, the judge took steps to ensure that they were rectified within a specific period and that the prisoners' rights were restored.

30. Mr. TODOROV (The former Yugoslav Republic of Macedonia) said that the officials of the Ministry of the Interior were required to bring a suspect before an examining magistrate within 24 hours of his arrest. The magistrate was obliged to inform the arrested person immediately of his right to be assisted by counsel during the examination and, if necessary, to have counsel assigned to him. If the arrested person chose to dispense with legal assistance or made no arrangements for it within 24 hours, the examining magistrate must proceed immediately with the investigation. The magistrate then decided whether to release the arrested person or to remand him in custody, in which case he informed the public prosecutor of his decision. If

the public prosecutor did not submit a request for investigation within the next 24 hours, the examining magistrate must release the arrested person.

31. Mr. YAKOVLEV expressed admiration of the delegation's comprehensive response and businesslike approach to the dialogue with the Committee.

32. Reverting to the question of invitations to citizens to appear at police stations for "informative talks", he noted that a person who refused to respond could be arrested. The implication was that a person who might be no more than a potential witness could be detained for 24 hours. If there were no charges, he would not even be entitled to legal assistance. Sources such as the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the former Yugoslavia, the United States Department of State and Human Rights Watch had complained of the widespread police practice of forcing persons to attend "informative talks" in the absence of counsel in an effort to obtain confessions under pressure. What was the legal status of persons arrested under such circumstances?

33. Mr. PENDAROVSKI (The former Yugoslav Republic of Macedonia) said that a police officer could not apprehend a person without prior authorization by a court. The judge must be convinced that the evidence presented by the police was sufficient to warrant further proceedings.

34. Mr. PETRESKI (The former Yugoslav Republic of Macedonia) said that the Constitutional Court had decided to abolish the practice of summoning citizens for "informative talks" in 1996 and the legislation had been amended in 1997.

35. Mr. PENDAROVSKI (The former Yugoslav Republic of Macedonia) said that, prior to 1997, a police officer had been able to apprehend a person whom he viewed as an offender without seeking the authorization of a judge.

36. Mr. PETRESKI (The former Yugoslav Republic of Macedonia) said that his country viewed the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment as one of the most fundamental human rights. During the past eight years, it had waged a determined campaign to eradicate such practices. Being aware, moreover, that torture and ill-treatment were virtually irreparable, the authorities were laying considerable emphasis on prevention. They also set great store by constructive dialogue and transparency, particularly in cooperation with international bodies such as the Committee, whose views and guidance would be turned to account and reflected in the next periodic report.

37. The CHAIRMAN said that the Committee had been assisted in its task by the large and highly qualified delegation which had taken great pains to respond in detail to its questions. He invited the delegation to return later in the session to hear the Committee's conclusions and recommendations.

38. The delegation of The former Yugoslav Republic of Macedonia withdrew.

The public part of the meeting rose at 4.35 p.m.